

Pension Benefit Guaranty Corporation

§ 4208.2

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes it pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this section if it determines that the rules therein are consistent with the purposes of ERISA. An abatement rule is not consistent with the purposes of ERISA if—

(1) Implementation of the rule would be adverse to the interest of plan participants and beneficiaries; or

(2) The rule would increase the PBGC's risk of loss with respect to the plan.

(Approved by the Office of Management and Budget under control number 1212-0044)

[61 FR 34088, July 1, 1996, as amended at 68 FR 61355, Oct. 28, 2003]

§ 4207.11 Method of filing; method and date of issuance.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part.

(c) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

[68 FR 61355, Oct. 28, 2003]

PART 4208—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

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AUTHORITY: 29 U.S.C. 1302(b)(3), 1388(c) and (e).

SOURCE: 61 FR 34093, July 1, 1996, unless otherwise noted.

§ 4208.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish rules for reducing or waiving the liability of certain employers that have partially withdrawn from a multiemployer pension plan.

(b) *Scope.* This part applies to multiemployer pension plans covered under title IV of ERISA and to employers that have partially withdrawn from such plans after September 25, 1980, and that have not, as of the date on which they satisfy the conditions for reducing or eliminating their partial withdrawal liability, fully satisfied their obligation to pay that partial withdrawal liability. This rule shall not negate reasonable actions taken by plans prior to the effective date of this part under plan rules implementing section 4208 of ERISA that were validly adopted pursuant to section 405 of the Multiemployer Act.

§ 4208.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, Multiemployer Act, multiemployer plan, PBGC, plan, and plan year.

In addition, for purposes of this part: *Complete withdrawal* means a complete withdrawal as described in section 4203 of ERISA.

Eligible employer means the employer, as defined in section 4001(b) of ERISA, as it existed on the date of its initial partial or complete withdrawal, as applicable. An eligible employer shall continue to be an eligible employer notwithstanding the occurrence of any of the following events:

- (1) A restoration involving a mere change in identity, form or place of organization, however effected;
- (2) A reorganization involving a liquidation into a parent corporation;
- (3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer; or
- (4) An acquisition by or of, or a merger or combination with another trade or business.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

Partial withdrawal year means the third year of the 3-year testing period in the case of a partial withdrawal caused by a 70-percent contribution decline, or the year of the partial cessation in the case of a partial withdrawal caused by a partial cessation of the employer's contribution obligation.

§ 4208.3 Abatement.

(a) *General.* Whenever an eligible employer that has partially withdrawn from a multiemployer plan satisfies the requirements in § 4208.4 for the reduction or waiver of its partial withdrawal liability, it may apply to the plan for abatement of its partial withdrawal liability. Applications shall identify the eligible employer, the withdrawn employer (if different), the date of withdrawal, and the basis for reduction or waiver of its withdrawal liability. Upon receiving a complete application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4. If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for

abatement of its partial withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* Within 60 days after an eligible employer that partially withdrew from a multiemployer plan applies for abatement in accordance with paragraph (a) of this section, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4 and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 4208.5 of this part, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4, then—

(1) The employer's partial withdrawal liability shall be eliminated or its annual partial withdrawal liability payments shall be reduced in accordance with § 4208.6, as applicable;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 4208.7;

(3) Any bonds furnished under § 4208.5 shall be canceled and any amounts held in escrow under § 4208.5 shall be refunded to the employer; and

(4) Any withdrawal liability payments originally due and paid after the end of the plan year in which the conditions for abatement were satisfied, in excess of the amount due under this part after that date shall be credited to the remaining withdrawal liability payments, if any, owed by the employer, beginning with the first payment due after the revised payment schedule is issued pursuant to this paragraph. If the credited amount is greater than the outstanding amount of the employer's partial withdrawal liability, the amount remaining after satisfaction of the liability shall be refunded to the employer. Interest on the credited amount at the rate prescribed in part 4219, subpart C, of this chapter (relating to overdue, defaulted, and overpaid withdrawal liability) shall be